

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

Robert Peoples, #270600	)	
	)	Civil Action No. 8:07-2897-CMC-BHH
Plaintiff,	)	
	)	<b><u>REPORT AND RECOMMENDATION</u></b>
	)	<b><u>OF MAGISTRATE JUDGE</u></b>
v.	)	
	)	
SCDC, et.al.,	)	
	)	
Defendants.	)	
_____	)	

The plaintiff, a prisoner proceeding *pro se*, brought this action alleging constitutional violations pursuant to 42 U.S.C. § 1983. The matter is before the Court on the plaintiff's motion for partial summary judgment [Doc. 29]. The Court has thoroughly reviewed the plaintiff's motion and accompanying exhibits. The Court finds that the plaintiff has not met his burden under Fed. R. Civ. P. 56 to show that no genuine issues of fact remain. While his evidence may be sufficient to demonstrate that triable issues of fact exist for trial, they do not eliminate all doubt as to the defendants' liability, as is required to grant judgment in the plaintiff's favor on this present motion. To that end, the plaintiff's motion and exhibits will be considered in regards to the defendants' pending motion for summary judgment, along with whatever response the plaintiff chooses to make to that motion. Summary judgment, partial or otherwise, however, cannot be granted the plaintiff on the record before the Court.

**CONCLUSION**

Wherefore, it is RECOMMENDED that the plaintiff's Motion for Summary Judgment [Doc. 29] be DENIED.

IT IS SO RECOMMENDED.

s/Bruce Howe Hendricks  
United States Magistrate Judge

July 11, 2008  
Greenville, South Carolina

**The plaintiff's attention is directed to the important notice on the next page.**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 10768  
Greenville, South Carolina 29603

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4<sup>th</sup> Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4<sup>th</sup> Cir. 1985).